



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: May 31, 2024
PROJECT: Gas South, LLC – Public Service Tax Audit
OIG No. 24-10
PERIOD: April 1, 2017 – April 30, 2022

INTRODUCTION

The City of Miami Beach Office of the Inspector General (OIG) performed this audit of the Public Service Tax (also known as Utility Tax) charged, collected, reported, and remitted by Gas South, LLC, to the City Finance Department for the audit period of April 1, 2017, through April 30, 2022. Additional testing was performed to determine the gas seller's compliance with other selected sections of the City Code and Florida Statutes.

Article III of the City Code, entitled "Public Service Tax," details the terms and conditions related to the charging, collecting, and remitting of Public Service Tax on all applicable purchases of electricity, metered gas, bottled gas, and fuel oil within the corporate limits of the City of Miami Beach. Section 102-152 requires the seller to collect and remit ten percent, exclusive of governmental charges and taxes, of the total amount shown on such bill on account of the purchase of electricity, metered gas, and bottled gas and four cents per gallon on fuel oil. The tax is due on all purchases within Miami Beach except those performed by an agency or instrumentality of the United States Government, the state, the county, or a municipality (Section 102-151).

SCOPE

The scope of the audit was to evaluate whether Gas South, LLC complied with selected sections of the City Code and Florida Statutes and whether all Public Service Tax monies due to the City of Miami Beach were timely and accurately paid. The audit period was April 1, 2017, through April 30, 2022, and selected transactions before and after this period were also examined.

METHODOLOGY

- Reviewed applicable provisions of the City Code of Ordinances and Florida Statutes.
- Interviewed and made staff inquiries to understand the internal controls, assess control risk, and plan audit procedures.

- Performed substantive testing consistent with the audit objectives, including, but not limited to, examination of appropriate transactions and records.
- Drew conclusions based on the results of testing, made corresponding recommendations, and obtained auditee responses and corrective action plans.
- Consulted with legal counsel in the Office of the City Attorney regarding any legal issues presented during the audit.
- Performed other audit procedures as deemed necessary.

FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. **Finding: No Assessment Was Levied Against Gas South, LLC In Relation To Its Reported Exemptions of Fuel Adjustment Charges on Miami Beach Transactions As It Was Deemed Compliant With Florida Statute 166.231(1)(b).**

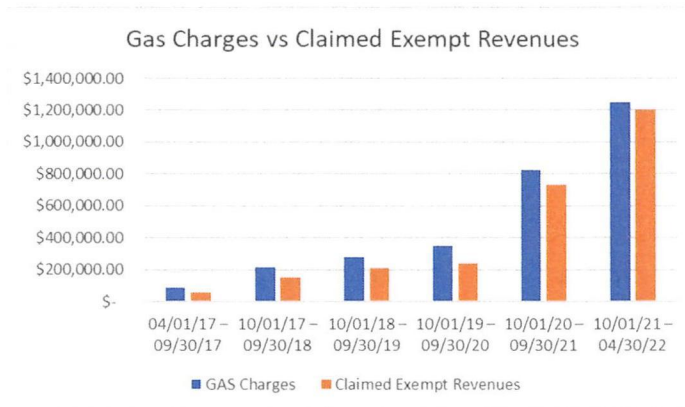
Gas South, LLC consistently reported and remitted Public Service Tax monthly during the audit period to the City Finance Department. The table below summarizes the total Public Service Tax paid for each of the stated periods.

Period	Public Service Tax Paid
04/01/17 – 09/30/17	2,917.90
10/01/17 – 09/30/18	6,037.49
10/01/18 – 09/30/19	7,275.14
10/01/19 – 09/30/20	10,582.69
10/01/20 – 09/30/21	9,415.76
10/01/21 – 04/30/22	4,153.77
Total	40,382.75

The gas seller fully cooperated with the OIG Auditors and provided the records and information needed to determine the accuracy and completeness of its reported filings. Multiple meetings were held during the audit process with its representatives to discuss the company's recordkeeping and reporting process, as well as the methodology used to determine the validity of any claimed exemptions, and to calculate the Public Service Tax due to the City.

An examination of Gas South, LLC's furnished system reports determined that the gas seller claimed that an average of 86.37% of its Miami Beach gross revenues during the audit period were exempt from Public Service Tax (see the table below).

Period	GAS Charges	Claimed Exempt Revenues	Exempt Percentage
04/01/17 – 09/30/17	\$ 89,129.39	\$ 59,951.68	67.26%
10/01/17 – 09/30/18	\$ 214,927.82	\$ 154,553.65	71.91%
10/01/18 – 09/30/19	\$ 281,546.73	\$ 208,797.20	74.16%
10/01/19 – 09/30/20	\$ 347,120.48	\$ 241,294.29	69.51%
10/01/20 – 09/30/21	\$ 826,563.85	\$ 732,414.40	88.61%
10/01/21 – 04/30/22	\$ 1,248,189.74	\$ 1,200,504.27	96.18%
Total	\$ 3,007,478.01	\$ 2,597,515.49	86.37%



Gas South, LLC representatives claimed its exempted gross receipts stemmed from the fuel adjustment charge provision addressed in Florida Statute 166.231(1)(b). Florida Statute 166.231(1)(b) states, "The tax [Public Service Tax] imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility after October 1, 1973."

Gas South, LLC representatives explained their methodology to calculate the fuel adjustment charge, which seemed reasonable to OIG Audit Division staff. However, the fuel adjustment charge was not separately stated on each invoice, as required under Florida Statute 166.231(1)(b), which could have led to disallowance of the claimed exemption from the Public Service Tax on transactions stemming from those deficient invoices.

The Office of the City Attorney initially opined that the claimed exemptions should be disallowed if the fuel adjustment charge is not separately listed on the gas seller's invoices. A 1975 Florida Attorney General Opinion supported this position in stating the following: "Any fuel adjustment charge" is defined to mean all increases in the cost of utility services to the ultimate consumer that result from an increase in the cost of fuel to the utility. Also, s. 2, Ch. 74-109, supra, requires that the exempt fuel adjustment charge be separately stated on each bill.

While OIG management was reviewing the work performed by its assigned Auditor, the Finance Department created invoice #36897, billing Gas South, LLC \$169,428.83 as a placeholder. Interest was calculated at a 10% rate per annum pursuant to City Code Section 102-157(b). The invoice was created at the request of the OIG to enable the City to pursue collections from transactions deemed non-exempt and occurring during the beginning months of the audit period within the applicable five-year statute of limitations, based on the advice of the Office of the City Attorney.

OIG staff also identified audits conducted by the Clerk & Comptroller, Palm Beach County, Division of Inspector General, in which significant assessments were levied against another gas seller, not Gas South, LLC. The Palm Beach County assessments were due to several identified deficiencies, including the disallowance of claimed exemptions related to fuel adjustment charges not separately stated on customer invoices. The case was not litigated as the gas seller opted to pay a reduced assessment, primarily due to several inadvertent duplicated invoices.

After analyzing all records and information furnished by Gas South, LLC, the OIG Auditor calculated that the City was due a total of \$325,660.92 comprised of \$271,857.39 in Public Service Tax plus \$53,803.53 in interest as of April 18, 2023 (see the table below).

Period	Utility Tax Due	Interest on balance due as of 4/18/2023	Total
04/01/17 – 09/30/17	\$ 5,995.04	\$ 3,394.76	\$ 9,389.80
10/01/17 – 09/30/18	\$ 15,455.29	\$ 7,617.96	\$ 23,073.25
10/01/18 – 09/30/19	\$ 20,879.53	\$ 8,226.39	\$ 29,105.92
10/01/19 – 09/30/20	\$ 24,129.36	\$ 7,298.36	\$ 31,427.72
10/01/20 – 09/30/21	\$ 73,240.63	\$ 12,704.84	\$ 85,945.47
10/01/21 – 04/30/22	\$ 120,665.20	\$ 13,819.29	\$ 134,484.50
Total	\$ 260,365.05	\$ 53,061.60	\$ 313,426.65
Additional Invoices provided	\$ 11,492.34	\$ 741.93	\$ 12,234.26
Grand total	\$ 271,857.39	\$ 53,803.53	\$ 325,660.92

The above amounts listed for each period comprising the subtotal represent taxable Miami Beach transactions included in the system reports initially provided to the OIG Auditor. The figures in the "additional invoices provided" line item were identified through review of the furnished invoices, as they were not recorded in the system reports. These taxable transactions occurred throughout the audit period and were intentionally reported separately above due to their different origins.

After several meetings between OIG staff and the Office of the City Attorney regarding the possible disallowance of the fuel adjustment charge exemptions taken, a preliminary draft audit report was finalized and sent to the attorney representing the gas seller, who was given time in which to provide the company’s legal position regarding the exemption issue.

The attorney representing Gas South, LLC, arguing against the imposition of the draft assessment based on disallowance of the claimed exemption, provided a Florida 5th Circuit Court decision, issued in 2000, ruled in favor of a gas seller, not Gas South, LLC, involving another governmental agency where the company similarly did not include the fuel adjustment surcharge on each customer invoice. The court decision allowed for the exemption, stating, “Although we agree that stating the state fee separately would make for an easier audit and is a justified requirement, we do not read into the state policy behind the ‘separately stated’ requirement an intent to forfeit monies collected for a similar purpose but included within the same heading on the invoice.”

In response to the attorney’s position and provided legal authority, the OIG and Office of the City Attorney staff met to discuss the new information and its impact on invoice #36897 and the audit. Upon consideration of all the available information, the Office of the City Attorney recommended that the exempted amounts related to the fuel adjustment charges be allowed and that the assessment be eliminated from the audit. Based on this decision, the OIG finalized the audit with no corresponding assessment levied against the gas seller.

Recommendation(s):

The City Finance Department should void invoice #36897 issued against Gas South, LLC for \$169,428.83 as a placeholder. The OIG recommends that Gas South, LLC should prospectively include the fuel adjustment surcharge as a separate line item on all its invoices issued to Miami Beach customers, to better ensure that it is compliant with the related requirements of Florida Statute 166.231(1)(b).

Gas South, LLC Response:

Gas South accepts this finding and agrees with the OIG's recommendation that the City Finance Department should void Invoice #36897 issued against Gas South, LLC on May 11, 2022 for \$169,428.83. Gas South will continue to comply with all requirements of Florida Statute 166.231.

City Finance Department Response:

Once the OIG audit report is finalized, the Finance Department will void invoice # 36897 for \$169,428.83 generated for Gas South LLC.

2. ***Finding: Gas South, LLC Remitted The Public Service Tax Due For 58 Of The 60 Reviewed Months (96.67%) After The Dates Specified In City Code Section 102-155(b) But Was Not Charged \$126.28 In Accumulated Interest By The City Finance Department.***

City Code Section 102-155(b) states, "Every seller [Gas South, LLC] is hereby required to execute and file no later than the 20th day of each month at the office of the finance department a statement setting forth the amount of such public service tax to which the city became entitled under the provisions of this section on account of bills paid by purchasers during the preceding month, and contemporaneously with the filing of such statements, shall pay the amount of public service tax to the finance department." In addition, section 102-157(b) states, "...any seller who fails to remit or is delinquent in remitting tax due under this article shall pay interest at the rate of ten percent per annum or the rate specified by F.S. 687.01, whichever is higher, on the unpaid amount of tax from the date on which the tax first became delinquent until paid."

Gas South, LLC remitted 58 of the 60 reviewed monthly Public Service Tax payments (96.67%) to the City Finance Department after the due dates specified in City Code Section 102-155(b). Only the payments for October 2018 and March 2022 were received timely, with late payments ranging from a low of two days to a high of 125 days, resulting in accumulated interest due to the City of \$126.28. Interest was charged at a rate of 10% per annum according to City Code Section 102-157(b).

Period	Interest due on late payments
04/01/17 – 09/30/17	\$ 7.30
10/01/17 – 09/30/18	\$ 24.46
10/01/18 – 09/30/19	\$ 15.14
10/01/19 – 09/30/20	\$ 51.44
10/01/20 – 09/30/21	\$ 20.58
10/01/21 – 04/30/22	\$ 7.36
Total	\$ 126.28

Recommendation(s):

City Finance Department staff should invoice Gas South, LLC \$126.28 in accumulated

interest related to the examined payments that were remitted after the due dates specified in City Code Section 102-155(b). In addition, City Finance Department staff should determine the timeliness of Gas South, LLC payments remitted after April 2022, and prepare an invoice, if needed, to bill the gas seller interest on any late payments.

Gas South, LLC Response:

Gas South accepts this finding and will remit payment to the City in the amount of \$126.28 once the audit report is finalized and the City Finance Department invoices Gas South accordingly.

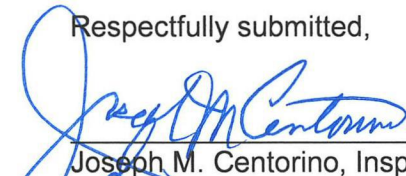
City Finance Department Response:

Once the OIG audit report is finalized, the Finance Department will invoice Gas South, LLC for the accumulated interest related to the examined payments that were remitted after the due dates specified in City Code Section 102-155(b). This invoicing will cover the period from April 2017 to April 2022.

Upon examination of remissions by Gas South, LLC after April 2022, the Finance Department has determined that three reports were submitted late. The reports for May 2022 and August 2022 were both 1 day late while the submission of the November 2022 report was 10 days late. The total interest expense for these three reporting periods is \$2.70. Once the OIG audit report is finalized, the City will invoice Gas South, LLC for interest expense due to late reporting.

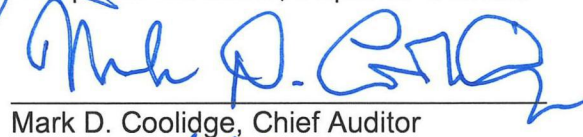
All responses received pursuant to City Code Section 2-256(h) were included in this final report.

Respectfully submitted,



Joseph M. Centorino, Inspector General

05/31/2024
Date



Mark D. Coolidge, Chief Auditor

05/31/2024
Date



Norman Blaiotta, Deputy Chief Auditor

5/31/2024
Date

- cc: Rickelle Williams, Interim City Manager
Jason Greene, Chief Financial Officer
Ric Dopico, City Attorney
Rob Rosenwald, Chief Deputy City Attorney
Steve Rothstein, Deputy City Attorney
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